COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

July 19, 1956

B-106864

CONFIDENTIAL

Dear Mr. Secretary:

On March 21, 1956, the Assistant Secretary-Controller requested our decision upon the question whether the provisions of Foreign Service Circular No. 81, dated May 7, 1954 (now in sections 131.4 and 151 of the Foreign Service Manual, as amended February 23, 1956), correctly state the intentions of our decisions in applying section 901 of the Merchant Marine Act of 1936, 49 Stat. 2015.

The referred-to statute provides as follows:

> "Any officer or employee of the United States traveling on official business overseas or to and from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor."

Section 4.2b of Foreign Service Circular No. 81 (section 131.43b of the Manual), which the Department issued prescribing the policies and procedures to be applied when travel or transportation by ship is involved provides as follows:

> "When direct American ships do not operate between the port nearest to the place where official travel originates and the port nearest to the authorized destination, and direct foreign ships do so operate, an employee and his dependents shall use the direct foreign ship."

In our decision of February 1, 1952, B-106864 (31 Comp. Gen. 351), which was rendered with the objective of establishing general policy guide lines governing the use of foreign vessels for your Department, we held, in answer to question 2, as follows:

> "In view of the purpose of section 901, economy alone generally may not be relied upon as the basis for using foreign vessels. However, where a routing designed to utilize an American vessel involves considerable land travel or transportation on a foreign vessel for a part of the journey with a

consequent trans-shipment to an American vessel at excessive extra cost and delay, foreign vessels furnishing direct transportation between the port of origin of the travel and the port of destination generally may be used. * * *" (Emphasis supplied.)

Our decisions of October 20, 1953, and July 26, 1955, B-106864, held that employees assigned to posts in the Netherlands, or at Brussels, Belgium, or Bonn, Germany, may not be authorized generally to utilize ships of foreign registry in traveling to and from the United States, because utilization of American vessels "involves travel by rail, or ship and rail, of less than a day." The holdings in those decisions were incorporated into Foreign Service Circular No. 81 as an exception to section 4.2b and it is now provided in section 131.4 of the Foreign Service Manual that employees assigned to any post in Germany, the Netherlands, Belgium, or Luxembourg are required to use American ships because of the nearness of ports at which American ships are available.

The Assistant Secretary-Controller says that aside from these exceptions, it was the intention of the Department, and he believes it was our intention, that the provisions of section 4.2b of the Foreign Service Circular No. 81 should be applied throughout the world.

While under 31 Comp. Gen. 351, foreign vessels furnishing direct service may be used generally where the port of origin of the ocean travel and the port of destination are not both served by American vessels, there is the explicit requirement that a routing designed to utilize an American ship involves transshipment "at excessive extra cost and delay." This requirement was the basis for our cited decisions of October 20, 1953, and July 26, 1955, and there is nothing contained in them to indicate that the underlying reasons for the holding are confined to the specific areas there involved. The Circular, except for the referred-to specific exception, authorizes the use of foreign vessels furnishing direct service without a requirement that the alternative transshipment required for use of American vessels be at excessive extra cost or delay. Having in mind the primary purpose of section 901, mere inconvenience to the traveler, reasonable delays and minor economies are not factors which normally would justify the use of foreign vessels over those operating under the American flag. To hold that the requirement of excessive extra cost and delay be limited to a specific area in Europe and would not be applicable to the rest of the world would, in our opinion, defeat the purpose of the statute. Consequently, we conclude that section 4.2b of Foreign Service Circular No. 81 and section 131.43b of the Foreign Service Manual so far as they provide general authority for the use of foreign vessels furnishing direct service without a requirement that a routing designed to utilize American vessels involve excessive extra cost and delay do not correctly state the purpose of our decisions concerning the use of foreign vessels.

However, the term "at excessive extra cost and delay" is abstract and is capable of different interpretations according to the particular situations involved. Consequently, its literal incorporation into applicable sections of your regulations without further definition would not serve the purpose thereof which is to provide general policy guide lines, consistent with our decisions, for application to particular situations without the requirement that the matters covered therein be submitted to our Office for advance decision. While in our decisions of October 20, 1953, and July 26, 1955, general authorization for the use of foreign vessels furnishing direct service was not given because a routing designed to utilize American vessels in the areas concerned "involves travel by rail, or ship and rail, of less than a day," we understand that, as an actuality, in the areas there concerned the transshipment required to utilize American vessels would not involve additional travel by rail, or ship and rail, in excess of 12 hours. Even though section 901 of the Merchant Marine Act of 1936, requires the use of vessels of American registry whenever available, it does not require an unreasonable procedure to be followed. A-78260, July 22, 1936; A-36517, May 8, 1931. It might appear unreasonable to extend the limitations of our decisions of October 20, 1953 and July 26, 1955, beyond the approximate travel time there involved. Therefore, we would not be required to object to a definition of the term at "excessive extra cost and delay" in your regulations as meaning "when a transshipment designed to utilize an American vessel involves additional travel by rail and/or ship in excess of 12 hours." Comparative waiting time involved, however, is to be continued to be given consideration. Furthermore, it would appear desirable to draw a distinction between situations involving official travel which originates or terminates at a port and official travel which originates or terminates at an inland city. In the former, where foreign vessels furnishing direct service are available, no transshipment would be required if foreign vessels were used and, in the latter, transshipment is required in any event. It would appear unreasonable to require an employee stationed at a port where foreign vessels furnishing direct service are available to travel overland or by sea to another port in order to utilize an American vessel. As stated above, section 901 does not require an unreasonable procedure to be followed. Consequently, it may be stated as a general rule that employees whose official travel originates or terminates at a port serviced by foreign vessels are not required to transship in order to utilize American vessels. A-36237, April 30, 1931.

The Assistant Secretary-Controller points out that our Office has recently questioned the use of foreign vessels in the following situations:

> "(1) Justification was requested for travel on a foreign ship from Oslo, Norway, directly to New York instead of going by rail and ship to Bremerhaven, Germany, to use an American ship.

"(2) Justification was requested for travel via foreign vessel from New York to Southampton (there being no American vessel within a reasonable time--5 days) instead of using an American ship from New York to Marseilles, France, on the coast of the Mediterranean, and crossing the entire country of France by rail and then crossing the English Channel.

"(3) Justification was requested for use of a foreign vessel from Copenhagen, Denmark, directly to New York instead of going to Bremerhaven, Germany, where an American vessel was available."

Our records indicate that the travel involved in situations (1) and (3) originated at Stockholm, Sweden, and that situation (2) involved travel by foreign vessel from New York to Plymouth, England. It appears that a routing designed to utilize American vessels in the three situations referred to above would involve additional travel by rail and/or ship in excess of 12 hours. Accordingly, we conclude that in such situations, American vessels were not available within the purview of section 901 of the Merchant Marine Act of 1936.

We hope that the foregoing comments will serve to alleviate some of the administrative difficulties involved in the authorization for the use of foreign vessels. However, we recommend that specific cases involving any doubt regarding the propriety of the use of foreign vessels continue to be submitted to our Office for advance decision.

Sincerely yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

The Honorable
The Secretary of State

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Remarks:

Par. 6 h is lifted from FSTR so apparently we will have to go along with it although I had same qualm as you - I agree that shipment of autos should be included -

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